

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On November 21, 2014 appellant, then a 51-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on September 11, 2014, while in the performance of duty, she sustained a mental and physical condition after finding the body of a customer, B.B., who had been deceased for three or four days. She stopped work on October 6, 2014.

In a statement dated January 12, 2015, appellant described her current symptoms of shakiness, a racing heart, and nightmares. She related that she knew that she needed assistance with her symptoms on September 18, 2014 because she could not stop thinking about what she had seen and smelled. Appellant submitted medical evidence.

By decision dated January 30, 2015, OWCP denied appellant's claim after finding that the medical evidence was insufficient to show that she sustained a medical condition due to the accepted employment incident.

On March 17, 2015 appellant requested reconsideration and submitted additional medical evidence. By decision dated May 27, 2015, OWCP denied modification of its January 30, 2015 decision. It determined that appellant had not submitted reasoned medical evidence supporting that she sustained a condition due to the accepted work incident.

Appellant, through counsel, requested reconsideration on October 23, 2015 based on new medical evidence. In a decision dated January 21, 2016, OWCP modified its May 27, 2015 decision to reflect that appellant had not established that she was in the performance of duty at the time of the September 11, 2014 employment incident. It determined that appellant had not established a compensable work factor. OWCP further found that determining the welfare of a customer was outside the course of her employment.

In a statement dated March 3, 2016, appellant related that she was delivering mail to B.B., a customer on her route, when she noticed that he had not removed his mail from his mailbox for the last three days. She had a package for him that would not fit in the mailbox. Appellant then left the home of B.B. and telephoned a friend who in turn called B.B.'s sister and related that B.B.'s sister last talked to him a few days earlier. She drove back to B.B.'s house to leave the package on his porch, still talking to her friend on the telephone. The front door was open and appellant's friend told her that B.B. often left his door open for his dog, and that she should yell because he had difficulty hearing. Appellant went onto the porch and a dog ran out of the house. She knocked on the wall and yelled for B.B. to tell him that he had a package. Appellant related:

"The television was up loud and the light on, so I was standing on the porch and I looked to my right still hollering and the dog bumped into me going back into the house. The dog stopped just inside the door and the smell just hit me. It was so bad I realized the dog was standing right beside Billy on the floor. I was shocked and scared, and screaming to Stacey on the phone."

She telephoned her supervisor. The sheriff's office came and she told them that she had not entered the house and that the door was open when she got there. Appellant related, "What I saw and the smell was so horrible and scary, that when I'm near his mailbox I fall apart."

On March 7, 2016 appellant, through counsel, requested reconsideration. Counsel asserted that appellant was performing her work duties when she delivered a package to B.B.'s door and

saw and smelled his body. Appellant noted that she did not go into B.B.'s home and only approached his door because she had a package to deliver. Counsel advised that the situation was factually similar to *Larry J. Thomas*,<sup>3</sup> where the Board found that a claimant had established as a compensable work factor finding the body of a suicide victim by his mailbox while he was delivering mail. Counsel related, "Although [appellant] did notice that [B.B.] had not picked up this mail for several days, the fact that she called a relative of his to make sure he was alright does not take her delivery of the package to [his] door outside of the performance of her regularly assigned duties."

In a decision dated July 20, 2016, OWCP denied modification of its January 21, 2016 decision.<sup>4</sup> It found that appellant had not established a compensable work factor.

On appeal counsel maintains that appellant was in the performance of duty at the time she found the body of B.B., noting that she did not enter B.B.'s house and was at his front door to deliver a large package. She cites *Larry J. Thomas*<sup>5</sup> in support of her contention that she was in the performance of duty. Counsel notes that appellant's only relationship with B.B. was as a long-standing customer on her route.

### **LEGAL PRECEDENT**

In providing for compensation programs for federal employees, Congress did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with her employment; liability does not attach merely upon the existence of an employee/employer relationship.<sup>6</sup> Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty. The Board has interpreted the phrase "while in the performance of duty" to be the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment." "In the course of employment" deals with the work setting, the locale, and the time of injury whereas "arising out of employment" encompasses not only the work setting, but also a causal concept, the requirement being that an employment factor caused the injury.<sup>7</sup> In addressing the issue, the Board has stated that in the compensation field, to occur in the course of employment, in general, an injury must occur: (1) at the time when the employee may reasonably be said to be engaged in her master's business; (2) at a place where she may reasonable be expected to be in connection with the employment; and (3) while she was reasonably fulfilling the duties of her employment or engaged in something incidental thereto.<sup>8</sup>

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<sup>3</sup> 44 ECAB 291 (1992).

<sup>4</sup> OWCP initially issued its decision on April 22, 2016; however, after counsel advised that she had not received a copy of the decision, it reissued the decision on July 20, 2016.

<sup>5</sup> See *supra* note 3.

<sup>6</sup> *George A. Fenske*, 11 ECAB 471 (1960).

<sup>7</sup> *Denis F. Rafferty*, 16 ECAB 413 (1965).

<sup>8</sup> *Carmen B. Gutierrez*, 7 ECAB 58 (1954).

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>9</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment, or to hold a particular position.<sup>10</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>11</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>12</sup>

### ANALYSIS

Appellant alleged that she experienced stress and anxiety as a result of finding the body of a customer on September 11, 2014 who had been deceased for three or four days. OWCP denied her claim after finding that she had not established a compensable factor of employment. The Board must, therefore, initially review whether the alleged incident constitutes a covered employment factor under FECA.

Appellant related that on September 11, 2014 she was delivering mail to B.B., a long-time customer on her route. She noticed that he had not picked up his mail from his mailbox in a few days. Appellant telephoned a friend who called B.B.'s sister. The friend advised that the sister had spoken to B.B. a few days earlier. While still on the telephone, appellant drove to B.B.'s house to leave a package on his front porch. The door was open and her friend told her that he often left the door open for the dog. The dog ran out of the house. Appellant knocked and spoke loudly to let B.B. know that she had left him a package. The dog ran back to just inside the door and appellant saw that he was next to B.B.'s body. She also smelled the body. Appellant telephoned her supervisor.

In *Lillian Cutler*,<sup>13</sup> the Board explained that, where an employee experiences emotional stress in carrying out her employment duties, or has fear and anxiety regarding her ability to carry

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<sup>9</sup> 5 U.S.C. § 8101 *et seq.*; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>10</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>11</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>12</sup> *Id.*

<sup>13</sup> *See supra* note 9.

out such duties, and the medical evidence establishes that the disability resulted from her reaction to such situation, the disability is generally regarded as within the coverage of FECA. An emotional reaction resulting from the performance of her day-to-day to specifically assigned duties or to a requirement imposed by the employment is compensable.<sup>14</sup>

OWCP's procedures include postal letter carriers in the first of its four "broad classes of off-premises workers" recognizing that the nature of the duties of these employees allows them to be on the employer's premises for only a portion of the day.<sup>15</sup> In determining whether this type of worker sustained an injury in the performance of duty, it must be determined whether the employee was performing assigned duties, was engaged in an activity which was a reasonable incident of the assignment, or had deviated from the assignment and was engaged in a personal activity which was unrelated to work.<sup>16</sup>

Appellant discovered B.B.'s body at a time when she may reasonable be said to be engaged in employment and at a place that she was expected to be as a result of her work duties. The Board finds, however, that she had deviated from her work duties at the time the injury occurred. Neither appellant's day-to-day duties nor any specially assigned duties required her to telephone a friend to inquire whether she had spoken with a customer recently. She further had no duty to look into his house when he failed to answer the door. Instead, appellant voluntarily engaged in actions unrelated to work in looking inside the customer's house, and telephoning the police when she saw his body.

In *Larry J. Thomas*,<sup>17</sup> the claimant alleged an emotional condition as a result of finding the body of a suicide victim next to a mailbox on his route. The Board determined that the incident occurred at a time when he was engaged in his employer's business, at a place where he could reasonably be expected to be, and while he was fulfilling his employment duties. This case, however, is distinguishable from *Thomas*, where the body was at the mailbox, impeding the claimant from performing his regular work duties. It is more similar to *Carla E. Phillips*<sup>18</sup> where the claimant learned that her husband, also an employee of the employing establishment, had been shot and killed while working. The Board found that appellant's emotional condition did not result from her assigned duties or other requirement imposed by employment, and that any assistance she rendered at that time was optional and not a requirement or factor of her employment. In the case at hand, appellant's act of telephoning a friend to see if she had spoken to the customer recently and then knocking on the customer's door to advise him about a package and ascertain his condition was an optional action rather than a work requirement. It thus constituted a deviation from her assigned work duties and is not compensable under FECA.<sup>19</sup> In a factually similar case, the claimant found a deceased customer in the customer's home.<sup>20</sup> The Board determined that she

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<sup>14</sup> See *S.R.*, Docket No. 10-2159 (issued July 20, 2011).

<sup>15</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5(a) (August 1992).

<sup>16</sup> *Id.* at Chapter 2.804.5(b).

<sup>17</sup> *Supra* note 3.

<sup>18</sup> 39 ECAB 1040 (1988).

<sup>19</sup> *Id.*

<sup>20</sup> See *D.S.*, Docket No. 16-0756 (issued September 12, 2016).

had not sufficiently explained why she entered the customer's residence and affirmed the denial of her claim.

On appeal counsel contends that she was in the performance of duty at the time of her injury as she was delivering a package to B.B.'s front door. As discussed, however, appellant has not shown that she was performing her work duties at the time she discovered the customer's body. She removed herself from employment by telephoning a friend, knocking on the customer's door, and looking inside the residence. Instead, appellant optionally chose to render assistance, which removes her from protection of FECA.<sup>21</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the April 22, 2016 decision of the Office of Workers' Compensation Programs is affirmed.<sup>22</sup>

Issued: May 2, 2018  
Washington, DC

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>21</sup> See generally *supra* note 18.

<sup>22</sup> Colleen Duffy Kiko, Judge, participated in this decision, but was no longer a member of the Board effective December 11, 2017.